

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAVON R. HAYES,

Plaintiff,

v.

JEFFREY BEARD, *et. al.*,

Defendants.

No. 3:11-cv-168

(JUDGE CAPUTO)

(MAGISTRATE JUDGE SMYSER)

ORDER

NOW this 6th day of August, 2012, upon review of the Report and Recommendation of Magistrate Judge J. Andrew Smyser (Doc. 71) for plain error or manifest injustice, **IT IS HEREBY ORDERED** that the Report and Recommendation (Doc. 115) is **ADOPTED IN PART AND REJECTED IN PART**. Plaintiffs claims for retaliation (Part 5) and Eighth Amendment medical claim (Part 3) will be allowed to proceed against Defendant Pieczynski. The balance of the Report and Recommendation is **ADOPTED** to the extent it is not inconsistent with that determination. This matter is **RECOMMITTED** to Magistrate Judge Smyser for further proceedings .

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge